

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KINESIS CORPORATION, a Washington Corporation,)	
)	Civil Action No. 13-cv-2107
)	
Plaintiff,)	COMPLAINT FOR WILLFUL
)	TRADEMARK INFRINGEMENT,
v.)	UNFAIR COMPETITION AND
)	UNFAIR BUSINESS PRACTICES
)	
BELKIN INTERNATIONAL, INC., a Delaware Corporation,)	DEMAND FOR JURY TRIAL
)	
)	
Defendant.)	

Plaintiff Kinesis Corporation (“Kinesis”) by and through its undersigned attorneys, avers and states as follows for its Complaint:

STATEMENT OF THE CASE

1. This is an action asserting claims for trademark infringement, unfair competition and unfair business practices under the federal Lanham Act, the common law and the laws of the State of Washington.

PARTIES

2. Plaintiff Kinesis is a Washington corporation having a business address of 22030 20th Avenue SE, Suite 102, Bothell, Washington 98021. Kinesis has manufactured and marketed keyboards and other computer peripherals and accessories and ergonomic office equipment for many years.

3. On information and belief, Defendant Belkin International, Inc. is a Delaware corporation having a place of business at 12045 E. Waterfront Drive, Playa Vista, California 90094.

JURISDICTION AND VENUE

4. This action is brought under the federal Lanham Act, 15 U.S.C. § 1051 *et seq.*, and the common law and statutory law of the State of Washington.

5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338, as well as 28 U.S.C. § 1367(a), which provides for supplemental jurisdiction over related state-law claims.

6. On information and belief, Defendant is subject to personal jurisdiction in the Western District of Washington because Defendant has continuous and systematic contacts with this district, offers its products for sale in this district, has committed acts of trademark infringement in this district, and has placed infringing products into the stream of commerce in this district, and venue is proper in this Court under 28 U.S.C. § 1391.

PLAINTIFF KINESIS AND ITS RIGHTS

7. Since at least as early as December 2006, Kinesis has marketed and sold computer keyboards under the trademark FREESTYLE, which is registered as U.S. Trademark Reg. No. 3,743,784. That registration is valid and subsisting. A copy of the Registration Certificate is attached hereto as Exhibit 1.

8. The FREESTYLE keyboard has been a hugely successful and popular product for Kinesis. Notably, the FREESTYLE keyboard was the Attendees' Choice winner at both the 2006 and 2011 National Ergonomics Conference & Expo. As a result, the FREESTYLE mark is extremely valuable to the company.

DEFENDANT AND ITS ACTIVITIES

9. On information and belief, Defendant Belkin (“Defendant”) markets and sells computer keyboards and other computer peripherals and accessories. Defendant is using the FREESTYLE trademark to promote a computer accessory, namely a case and cover for the new Apple iPad Air. Attached hereto as Exhibit 2 are copies of Belkin’s website pages advertising and selling its product bearing FREESTYLE as a trademark.

10. Defendant’s FREESTYLE computer accessories were and are being sold to the same consumers as Kinesis’s FREESTYLE computer keyboards.

11. Defendant’s FREESTYLE computer accessories were and are available for sale in this judicial district and elsewhere.

12. Defendant is promoting infringing FREESTYLE computer accessories in this district via its website at www.belkin.com, as shown on the screenshots accompanying this Complaint as Exhibit 2.

FIRST COUNT

TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

13. Kinesis realleges and incorporates by reference the allegations of Paragraphs 1 through 12 of this Complaint as though fully set forth herein.

14. Defendant’s use of FREESTYLE as a trademark in connection with the sale and marketing of computer accessories is likely to cause confusion and mistake and to deceive others into believing that Defendant’s computer accessories are sponsored by, approved by, or affiliated with Kinesis.

15. Defendant’s acts, as herein alleged, constitute infringement of Kinesis’s registered FREESTYLE trademark under U.S.C. § 1114.

16. Kinesis has been, and will continue to be, damaged by Defendant's willful trademark infringement in a manner and amount that cannot be fully measured or compensated in economic terms, for which there is no adequate remedy at law.

17. The actions of Defendant have damaged and will continue to damage Kinesis's business, market, reputation, and goodwill, and may discourage current and potential customers from dealing with Kinesis. Such irreparable damage will continue unless the acts of Defendant are enjoined.

18. Kinesis has been damaged by Defendant's actions in an amount to be proven at trial.

SECOND COUNT

FEDERAL FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125

19. Kinesis realleges and incorporates by reference the allegations of Paragraphs 1 through 18 of this Complaint as though fully set forth herein.

20. Kinesis's FREESTYLE trademark is a designation of origin that identifies Kinesis as the exclusive source of its goods, and distinguishes Kinesis's goods from the goods of others in the marketplace.

21. Defendant's use of FREESTYLE as a trademark constitutes false designation of origin, false or misleading description, and/or false or misleading representation. Defendant's use of an identical or confusingly similar variation of Kinesis's FREESTYLE trademark is likely to cause confusion, mistake, or deception of others as to the affiliation, connection, or association of Defendant with Kinesis and vice versa. It is also likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of Defendant's computer accessories using FREESTYLE as a trademark.

22. Such false designation, description, and/or representation constitutes unfair competition and is an infringement of Kinesis's rights in its FREESTYLE trademark in violation of § 43(a) and (d) of the Lanham Act, 15 U.S.C. § 1125(a) and (d).

23. Kinesis has been, and will continue to be, damaged by Defendant's false description, false representation, false designation of origin, and other acts of unfair competition in a manner and amount that cannot be fully measured or compensated in economic terms.

24. Defendant's actions have damaged, and will continue to damage, Kinesis's market, reputation, and goodwill, and may discourage current and potential customers from dealing with Kinesis. Such irreparable harm will continue unless Defendant's acts are enjoined.

25. Kinesis has been damaged by Defendant's actions in an amount to be proven at trial.

THIRD COUNT

COMMON LAW TRADEMARK INFRINGEMENT

26. Kinesis realleges and incorporates by reference the allegations set forth in paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. Defendant's use of an identical trademark or confusingly similar variation of Kinesis's FREESTYLE trademark in association with the sale of computer accessories is likely to cause confusion and mistake. Such use of an identical trademark by Defendant is likely to deceive others into believing that Defendant's products are sponsored by, approved by, or affiliated with Kinesis.

28. Defendant's acts, as above alleged, constitute infringement of Kinesis's trademark rights in violation of the common law.

29. Kinesis has been and continues to be damaged in a manner that cannot be fully measured or compensated in economic terms and for which there is no adequate remedy at law.

The actions of Defendant have damaged and will continue to damage Kinesis's market, reputation, and goodwill.

30. Kinesis has been damaged by Defendant's actions in an amount to be proven at trial.

FOURTH COUNT

UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICE **UNDER RCW 19.86.020**

31. Kinesis realleges and incorporates by reference the allegations set forth in paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Defendant's use of FREESTYLE as a trademark in connection with the promotion and sale of computer accessories, which infringes Kinesis's FREESTYLE trademark, constitutes an unfair method of competition in business and an unfair trade practice in business, which is damaging to the public interest in violation of the Washington Consumer Protection Act, RCW 19.86.020.

33. Defendant's use of a trademark that infringes Kinesis's trademark in connection with the marketing and sale of computer accessories has been and is knowing, willful, and deliberate, and constitutes fraudulent representation.

34. Kinesis has been and will continue to be irreparably injured by reason of Defendant's unfair methods of competition and unfair trade practices in violation of the Washington Consumer Protection Act. Such irreparable damage will continue unless the acts of Defendant are enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kinesis respectfully prays for judgment against Defendant as follows:

1 1. That Defendant, and its affiliates, officers, agents, servants, employees, attorneys
 2 and all other persons in active concert or participation with it, be preliminarily and permanently
 3 enjoined and restrained from using FREESTYLE as a trademark or any other trademark identical
 4 to or confusingly similar to Kinesis's FREESTYLE trademark, alone or in combination with
 5 other terms or phrases.

6 2. That Defendant, and its affiliates, officers, agents, servants, employees, attorneys
 7 and all other persons in active concert or participation with it, be preliminarily and permanently
 8 enjoined and restrained from all acts of false description and representation and false designation
 9 of origin, and all acts of unfair competition, including the use of FREESTYLE as a trademark or
 10 any other trademark identical to or confusingly similar to Kinesis's FREESTYLE trademark,
 11 alone or in combination with other terms or phrases.

12 3. That Defendant, and its affiliates, officers, agents, servants, employees, attorneys
 13 and all other persons in active concert or participation with it, be preliminarily and permanently
 14 enjoined and restrained from all manufacture, purchase, promotion, sale, and use of any products,
 15 packaging, advertising, labels, websites or other sales or shipping material that infringe Kinesis's
 16 FREESTYLE trademark, and packaging, advertising, labels, websites or other sales or shipping
 17 material using FREESTYLE as a trademark or any other trademark identical to or confusingly
 18 similar to Kinesis's FREESTYLE trademark, alone or in combination with other terms or
 19 phrases.

20 4. That Defendant, and its affiliates, officers, agents, servants, employees, attorneys
 21 and all other persons in active concert or participation with it, be ordered to deliver all products,
 22 packaging, advertising, labels, or other sales or shipping material in their possession or control to
 23 Kinesis that infringe Kinesis's FREESTYLE trademark, including products, packaging,
 24 advertising, labels, or other sales or shipping material using FREESTYLE as a trademark or any
 25 other trademark identical to or confusingly similar to Kinesis's FREESTYLE trademark, alone or
 26 in combination with other terms or phrases.

6. That Defendant be directed to file with this Court and serve on Kinesis within thirty (30) days after the service of an injunction a report in writing, under oath, setting forth in detail the manner and form in which Defendant and its affiliates, officers, agents, servants, employees, attorneys and all other persons in active concert or participation with it, have complied with the injunction.

7. That Defendant be required to pay Kinesis such damages as Kinesis has sustained, or will sustain, in consequence of Defendant's false description and representation, false designation of origin, unfair competition and trademark infringement, and to account for all gains, profits, and advantages derived by Defendant that are attributable to such unlawful acts; and that such damages be trebled against Defendant, as provided by 15 U.S.C. § 1117, the common law and the laws of the State of Washington.

8. That the Court adjudge this to be an exceptional case and require Defendant to pay over to Kinesis the costs of this action, including reasonable attorneys' fees and interest, and treble damages as provided by 15 U.S.C. § 1117 and the laws of the State of Washington.

9. That Defendant be ordered to pay Plaintiff prejudgment and postjudgment interest on all sums allowed by law.

10. That Plaintiff has such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Kinesis demands a trial by jury as to all issues so triable.

DATED this 20th day of November, 2013, at Seattle, Washington.

Respectfully submitted,

SEED IP Law Group PLLC

/s/Kevin S. Costanza

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